

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

WASTE MANAGEMENT OF PENNSYLVANIA, INC.¹

Employer

and

Case 4–RC–20287

TEAMSTERS LOCAL UNION NO. 384, a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a division of Waste Management Inc., is engaged in the business of collecting, hauling and disposing trash throughout the Commonwealth of Pennsylvania. Its headquarters is located in Morrisville, Pennsylvania. The Petitioner seeks to represent a unit of

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

drivers, helpers, laborers, warehouse employees, fork truck drivers, welders, mechanics, equipment operators and truck jockeys employed by the Employer at its Gilbertsville, Leesport, Downingtown and Telford, Pennsylvania facilities, excluding clerical employees, dispatchers, sales employees, managers, guards and supervisors as defined in the Act. The parties agree as to the composition of the unit but disagree with respect to its scope. The Employer contends that the proposed four-facility unit is inappropriate and that only separate units of employees at each of the facilities would be appropriate.

The Employer is divided into ten districts, each of which encompasses a number of geographically proximate facilities. The four sites that the Petitioner seeks to represent comprise the Southeastern Pennsylvania District. The Employer's highest-ranking official is its Regional Vice President, Richard Godshall, whose office is at the Morrisville headquarters. Patrick Kelly is the Employer's District Manager for the Southeastern Pennsylvania District (herein called the District). Along with the other nine District Managers, Kelly reports directly to Godshall. Although Kelly has offices at Gilbertsville and Telford, he regularly spends time at all four of the sites in the District. On about April 5, 2001, Kelly created a new position of District Operations Manager and appointed Tony Wright to serve in that capacity. Wright is in charge of operations at all of the sites in the District, and he reports to Kelly. A District Maintenance Manager, Rob Kookan, oversees the maintenance operations at all four sites, and a District Safety Manager, Dave Yesavage, handles safety throughout the District.

The Telford facility employs 85 employees in the proposed unit, Gilbertsville employs 65, Leesport employs 40, and Downingtown employs 28 employees. All four sites employ drivers and laborers or helpers who collect trash from residential, commercial and industrial customers. Employees utilize rear-load trucks for residential trash collection, which generally requires both a driver and a laborer. Commercial waste collection frequently involves the use of a front-end load truck, which can be operated by a driver working alone. The facilities also use "roll-off trucks" for construction sites or other large commercial customers. These trucks collect trash from containers called roll-off boxes and may be operated by drivers without the assistance of a helper. Each of the four facilities has its own maintenance department at which maintenance mechanics perform preventive maintenance and repairs.

Three facilities have a Site Manager who is generally responsible for operations. Byron Fletcher serves as the Site Manager at Gilbertsville, David Murphy holds the same position at Telford, and Tom Fronczak is the Site Manager at Leesport. The Site Managers report directly to Kelly and are responsible, among other things, for hiring and firing. Rather than a Site Manager, Downingtown has a Site Supervisor, Donna Risbon, who was recently hired and is training to be a Site Manager. She reports to Gilbertsville Site Manager Fletcher. Each of the sites also has Route Managers and Station Managers who report to the Site Managers.³ Telford has a roll-off Route Manager, commercial Route Manager, residential Route Manager, and Transfer Station Manager. At both Gilbertsville and Leesport, there are two Route Managers, one for residential work and one for commercial and industrial work. Downingtown has only one Route Manager. Route Managers have the authority to discipline employees and to transfer employees between routes, and they are required to conduct two safety training meetings per month. Route Managers also prepare employees' annual evaluations. Reporting to the

³ The parties stipulated at hearing that Route Managers and Station Managers are statutory supervisors.

residential Route Managers are Route Foremen,⁴ whose primary responsibility is to ensure that the crews are following proper procedures and performing their work effectively. Telford and Gilbertsville each have two Route Foremen, and Downingtown has one. At Leesport, the residential Route Manager fulfills the functions of a Route Foreman. All sites also have dispatch offices. Gilbertsville and Telford employ two dispatchers apiece, and Downingtown and Leesport have one dispatcher each. In the maintenance department, Telford has two supervisors, one on day shift and another on night shift, and Leesport has one.⁵

The four facilities are located between 20 and 53 miles from each other. The drive from the Gilbertsville facility to any of the other three sites requires about 35 to 40 minutes. It takes about 75 minutes to drive from Telford to Downingtown and 70 minutes to drive from Telford to Leesport. The Gilbertsville, Downingtown and Telford facilities deposit waste at the Pottstown Landfill, although Downingtown and Telford employees use the landfill less frequently than Gilbertsville employees do. All three sites also utilize various other landfills, some of which are owned by the Employer. Telford is the only site that has a transfer station on its premises. The transfer station provides temporary storage for the collected waste until it can be transported to landfills by independent truck drivers not employed by the Employer. Unlike the other three sites, the Telford facility deposits most of its collected refuse at its transfer station rather than disposing of it directly at landfills. The Telford transfer station is staffed by six equipment operators and jockey drivers, who move the transfer trailers in and out of the facility as needed. These classifications are not present at the other sites.

The four facilities primarily recruit employees through newspaper advertisements, which generally list all four locations. When there is a job opening at any of the four sites, the opening is posted at all four sites. There is no evidence, however, that an employee from one site has ever filled a job opening at another site. All applicants complete the same application form, one that is standard for Waste Management facilities in North America. District Safety Manager Yesavage screens all applications, but each site hires its own employees. All District employees must take physical examinations and drug tests prior to hire, as mandated by Department of Transportation regulations. Thereafter, they all receive orientation for one day at Gilbertsville, followed by about two to three weeks of training for drivers and three days of training for helpers at their separate sites. Further, the District uses the same employee handbook for employees at the four sites. All of the Employer's employees receive the same benefits. Employees generally swipe time clocks at their separate facilities⁶ and are paid on a weekly basis. A payroll processing company sends the checks to Gilbertsville, and from there a courier delivers them by to the remaining sites for distribution to employees. Additionally, each of the four sites offers safety challenges, at which employees can earn awards. Safety Manager Yesavage conducts monthly safety training at each of the four sites. The Employer also holds an annual Christmas party for Telford employees and another for all employees of Gilbertsville, Leesport and Downingtown.

⁴ The parties stipulated at hearing that Route Foremen are statutory supervisors under the Act, and therefore ineligible to vote.

⁵ The record does not indicate whether there are maintenance supervisors at Gilbertsville or Downingtown.

⁶ The record indicates that they can only swipe in at other locations if the clocks were reprogrammed to accept the card.

Each of the four sites has a separate operating budget as well as separate financial and profit-and-loss statements. All costs at a facility are charged to that facility's budget. The District prepares a monthly financial statement reflecting the sum profits and losses of all four facilities. The level of employment at a site may depend on the amount of business there. Thus, two helpers at Leesport were laid off at the end of 1999 because that facility had lost a customer. The payroll records of Leesport and Downingtown employees are maintained at the Gilbertsville office. Gilbertsville also handles all customer service inquiries for Leesport and Downingtown and transmits customer service notes to those facilities the day after they are recorded. Telford has its own customer service department. All sites maintain an inventory sheet that reflects the current inventory of roll-off containers for all four sites. The four sites also share some equipment, including trucks and roll-off containers. Equipment also may be shared with facilities in other districts. Gilbertsville has a welding shop that repairs dumpsters for all four facilities. Site Managers have the authority to make purchases for the day-to-day operations at their sites.

There is occasional interchange of employees among the facilities. Louis Tate, a former roll-off driver at Gilbertsville, recently was temporarily transferred to both Telford and Leesport, for a few months each, to perform light duty work. While working at Gilbertsville, Tate was directed at times to pick up parts for trucks and deliver them to the Leesport or Telford maintenance shops. Tate also testified as to instances where other employees were temporarily sent to work sites other than their own. In one instance, an employee was sent from another site to work at Telford for three days when Telford was understaffed. On another occasion, an employee at Gilbertsville was assigned Downingtown routes for two to three months. Another time, a Leesport maintenance mechanic worked in the maintenance shop at Gilbertsville for two weeks while a mechanic there took vacation. Further, a Gilbertsville driver routinely made stops at Telford customers on Saturdays before dumping his loads at the Telford transfer station. Additionally, the record shows that a Telford roll-off driver worked two or three days doing roll-off work in Gilbertsville, a front-load driver and a roll-off driver did some work at Downingtown, and a Downingtown roll-off driver performed some work at Gilbertsville. At times, trucks from one location may be sent to another facility if necessary to service a customer. Drivers from different facilities regularly see each other at the Pottstown Landfill. There is also some integration in the dispatch process. Thus, the dispatch office for Gilbertsville occasionally provides dispatch services for Downingtown. The record also includes a document entitled "SEPA Dispatch Process," which sets forth a requirement that Downingtown and Leesport send their daily route schedules to Gilbertsville.⁷

None of the Employer's ten districts is organized by a union on a district-wide basis. Rather, each of the four facilities that are organized contains only one facility in its respective bargaining unit.⁸ In the Southeastern District, only the Leesport facility has been organized, from 1992 until 1995, before the Employer acquired the facility.

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir.1951). Thus, the unit sought by the petitioner is always a

⁷ It is not clear from the record what purpose this requirement serves.

⁸ There is one organized facility in Bristol, one in Johnstown, and two in Pittsburgh, Pennsylvania.

relevant consideration, *Lundy Packing Co., Inc.* 314 NLRB 1042, 1043 (1994); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989), and a petitioner cannot be compelled to seek a narrower appropriate unit if a broader unit is also appropriate. *Overnite Transportation Co.*, 322 NLRB 723, 723-724 (1996). If the unit sought by the petitioner is an appropriate unit, the inquiry ends there. *Dezcon*, supra, 295 NLRB at 112.

Ordinarily when considering a multi-facility operation, the Board holds that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate, Inc.* 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). However, that presumption is inapplicable where the petitioning union seeks to represent a multi-facility unit. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322 (1992).⁹ Under these circumstances, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (1) similarity in employee skills, duties and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facilities; and (5) bargaining history. *Alamo Rent-A-Car*, 330 NLRB No. 147 (Mar. 17, 2000); *Macy's West, Inc.*, 327 NLRB 1222, 1223 (1999).

The employees at the four sites in the District all enjoy the same benefits and working conditions and share common skills and functions. See *Dezcon*, supra, 295 NLRB at 111. With the exception of the equipment operators and truck jockeys at the Telford transfer station, the job classifications are the same at all of the sites. Additionally, the proposed multi-facility unit corresponds to an administrative grouping established by the Employer. See *Alamo Rent-a-Car*, supra, 330 NLRB, slip op. p. 3. All employees are subject to the same employee handbook. Moreover, although the sites each have local day-to-day supervision, there is a tier of management oversight that encompasses all four sites. Thus, the District Manager, Operations Manager, Safety Manager and Maintenance Manager all bear responsibility for the entire District. Similarly, there is significant overlap in administrative processes, particularly with respect to Gilbertsville, Leesport and Downingtown. Thus, Gilbertsville processes all of the payroll records for the other two sites as well as its own and also handles customers service inquiries for those sites, which it transmits to them on a daily basis. Additionally, the Downingtown Site Supervisor currently reports directly to the Gilbertsville Site Manager, and there is some overlap in dispatching between the two sites. There is also evidence of contact and interchange between employees of different sites within the District. Thus, the Employer has moved employees and equipment from one facility to another on various occasions as the need has arisen. *Oklahoma Installation*, supra, 305 NLRB at 813. The distance between the sites is not so far as to preclude a community of interest between employees of the different facilities. Indeed, employees may see each other at times when transporting equipment, working at a landfill or attending a Christmas party. See *Macy's West*, supra, 327 NLRB at 1223. It is also not persuasive that a few other facilities of the Employer have been organized on a site-by-site rather than multi-site basis. In this regard, the Board is clearly permitted to find different units to be appropriate at different facilities of the same employer. *Overnite Transportation Co.*, supra, 322 NLRB at 724. Based on the foregoing, I find that the employees at the four sites sought by

⁹ In this regard, many of the cases cited by the Employer involve petitions seeking single-facility units and therefore are inapposite. *Capital Coors*, supra, 309 NLRB at 322.

the petition possess a sufficient community of interest as to constitute an appropriate unit. *Capital Coors*, supra; *Oklahoma Installation*, supra.

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, helpers, laborers, warehouse employees, fork truck drivers, welders, mechanics, equipment operators and truck jockeys employed by the Employer at its Gilbertsville, Leesport, Downingtown and Telford, Pennsylvania facilities, excluding clerical employees, dispatchers, sales employees, managers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,¹⁰ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**TEAMSTERS LOCAL UNION NO. 384, a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO**

LIST OF VOTERS

¹⁰ Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 16, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 23, 2001**.

Signed: October 9, 2001

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

440-3301
440-3375-5000